

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MICHAEL WILTFONG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:17-CV-00265-DGK
)	
JOHNSON CONTROLS, INC., et al.,)	
)	
Defendants.)	

**ORDER GRANTING DEFENDANTS’ UNOPPOSED MOTION TO STRIKE JURY
DEMAND AND CLAIMS UNDER MO. REV. STAT. §§ 375.296 AND 375.420**

This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.* Specifically, Plaintiff Michael Wiltfong (“Plaintiff”) seeks accidental dismemberment benefits under an employee welfare benefit plan sponsored by his employer, Defendant Johnson Controls, Inc., and funded by group policies issued by Defendant Metropolitan Life Insurance Company. In his complaint, Plaintiff acknowledges the Court has federal question jurisdiction because he brings this action pursuant to 29 U.S.C. § 1132(a)(1)(B). Compl. ¶ 1 (Doc. 1). He demands a jury trial, and seeks damages for Defendants’ alleged vexatious refusal to pay pursuant to Missouri Revised Statute sections 375.296 and 375.420. Compl. at 1 (demanding a jury trial in the caption), 4 ¶ 30 (seeking damages pursuant to Mo. Rev. Stat. §§ 375.296, 375.420), 5 (same).

Now before the Court is Defendants’ Motion to Strike Jury Demand and Claims Under Mo. Rev. Stat. §§ 375.296 and 375.420 (Doc. 9). Defendants assert Plaintiff’s claims and remedies are limited solely to those provided by ERISA, and jury trials are not available for claims asserted under any of ERISA’s remedial provisions. Mot. ¶¶ 3-5 (Doc. 9). Because Plaintiff did not file suggestions in opposition to this motion by the June 15, 2017, deadline, the

Court treats Defendants' motion as unopposed. *See* L.R. 7.0(c)(2) ("Within 14 days after a motion is filed, each party opposing the motion *must* file suggestions opposing the motion.") (emphasis added).

Accordingly, Defendants' Motion to Strike Jury Demand and Claims under Mo. Rev. Stat. §§ 375.296 and 375.420 (Doc. 9) is GRANTED. The Court strikes Plaintiff's jury demand and his claims under Mo. Rev. Stat. §§ 375.296 and 375.420.

IT IS SO ORDERED.

Dated: August 30, 2017

/s/ Greg Kays

GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT